STATE OF MICHIGAN
IN THE SUPREME COURT
APPEAL FROM THE COURT OF APPEALS
JUDGES: RICHARD ALLEN GRIFFIN, MARK J. CAVANAGH
AND KAREN FORT HOOD

FORD MOTOR COMPANY,

Petitioner-Appellant,

vs.

Supreme Court No. 127424
Court of Appeals No. 246579
Michigan Tax Tribunal No. 288822

BRUCE TOWNSHIP,

Respondent-Appellant,

/

FORD MOTOR COMPANY,

Petitioner-Appellant,

Supreme Court No. 127422
Court of Appeals No. 246378
Michigan Tax Tribunal No. 294958

vs.

CITY OF WOODHAVEN and COUNTY OF WAYNE,

Respondents-Appellees,

/

FORD MOTOR COMPANY,

Petitioner-Appellant,

Supreme Court No. 127423
Court of Appeals No. 246379
Michigan Tax Tribunal No. 294924

vs.

CITY OF STERLING HEIGHTS,

Respondent-Appellee.

/

BRIEF ON APPEAL
APPELLEES CITY OF WOODHAVEN AND WAYNE COUNTY

Oral Argument Requested

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STATEMENT REGARDING JURISDICTION

Appellees accept the Statement of the Basis of Jurisdiction provided in Appellant Ford Motor Company's Brief on Appeal, and add that jurisdiction appears proper under MCR 7.301(A)(2) as a review of a case following a decision by the Court of Appeals.

COUNTER-STATEMENT OF QUESTIONS INVOLVED

I. DOES FORD'S CLAIMED MISREPORTING OF INFORMATION REGARDING ITS PERSONAL PROPERTY CONSTITUTE A "MUTUAL MISTAKE OF FACT" UNDER MCL 211.53a ?

The Tax Tribunal Answered **No**.

The Court of Appeals Answered **No**.

Respondent-Appellees says **No**.

Petitioner-Appellant says **Yes**.

COUNTER-STATEMENT OF FACTS

This matter involves the attempt of Petitioner Ford Motor Company ("Ford") to have it's 1999 personal property tax assessment revised retroactively in 2002. On or about August 28, 2002, Ford filed the underlying appeal with the Michigan Tax Tribunal Ford's claim is succinctly set forth in the Petition for Review, dated August 28, 2002, which was filed in the Tax Tribunal below:

> "Petitioner inadvertently reported and the Respondent inadvertently assessed Petitioner's personal property incorrectly. Thus a mutual mistake of fact occurred regarding the taxability of Petitioner's Personal Property." See Petition for Review at ¶10, App. at 45a..

The basis for Ford's claim of "mutual mistake" is stated in paragraph 9 of the Petition for Review, where Ford claims that in 2001 and 2002, it conducted inventories of assets at the Woodhaven Stamping Plant revealed that "...certain assets as of December 31, 1998 were classified incorrectly, not taxable for Michigan personal property tax purposes, retired or idled ." See Petition for Review at ¶9, App. at 45a.

There is no question that the Appellees did not conduct an independent assessment of the Appellant's personal property, but instead relied upon the information reported by Appellant Ford Motor Company.

Upon the Appellees' Motion to Dismiss, the Michigan Tax Tribunal issued its Order Granting Respondents' Motion to Dismiss dated January 9, 2003, with a minor correction being issued on January 28, 2003. These are the Orders from which Appellant Ford takes its appeal. The Tax Tribunal held that Ford's allegations regarding the misreporting of information to the assessor, and the assessor's issuing its assessment based upon Ford's allegedly erroneous information would not amount to a claim of "mutual mistake" within the meaning of MCL 211.53a. See Order Granting Respondents' Motion to Dismiss dated January 9, 2003, at p. 2, App. at 49a..

On October 5, 2004, the Court of Appeals affirmed the decision of the Michigan Tax Tribunal, holding that the alleged mistake was not mutual, but rather simply a negligent mistake on the part of Ford. See Court of Appeals opinion at p. 6, App. at 79a..

ARGUMENT

I. THE MISREPORTING OF INFORMATION REGARDING PERSONAL PROPERTY BY THE TAXPAYER DOES NOT CREATE A "MUTUAL MISTAKE OF FACT" UNDER MCL 211.53a.

Ford claims that a "mutual mistake of fact" occurred when it "mistakenly categorized some of the property, and it reported property that was 'idle' or retired as if it were not, and also reported some property that was not subject to taxation by [Woodhaven]" See Appellant's Brief on Appeal in the Court of Appeals at pp. 2-3.

The precise issue raised by Ford in the instant case was recently addressed by the Court of Appeals. In General Products Delaware Corp. v. Leoni Twp., unpublished per curiam of the Court of Appeals, decided May 8, 2003, (Docket No. 233432) (attached to Appellant Ford's Brief on Appeal as Exhibit B), the petitioner, General Products, had requested relief under MCL 211.53a, arguing that a mutual mistake of fact resulted from its misidentification of various types of personal property regarding dates of acquisition, reporting of assets which had previously been disposed of, reporting exempt special tools, and misclassification of various types of personal property.

The respondent in General Products, Leoni Township, relying upon the information reported by the taxpayer, issued assessments which General Products argued were incorrect, and the result of "mutual mistakes of fact" Id. at p. 2. The Court rejected General Products' argument, finding that the misreporting of personal property to the assessor did not create a "mutual mistake of fact" under MCL 211.53a, stating as follows:

> "Here there was no mutuality because petitioner's mistake was based on its incorrect inventory and analysis of its property. The assessor's

> mistake was based on petitioner's representations on its personal property statement. Thus, there was a different basis for each of the two mistakes made. The nature of the taxation system and the sheer number of businesses that pay taxes do not allow each assessor to individually check each of petitioner's representations on its personal property statement. Petitioner argues that by accepting this statement, the assessor is adopting it as his belief and should be deemed to have made the same mistake as the petitioner. However, this is contrary to the plain meaning of the term "mutual mistake" of fact. **In essence, petitioner is asking that its unilateral mistake be imputed to the assessor and reclassified as a mutual mistake of fact.**" General Products, id. at 4. (emphasis added).

Applying the General Products' reasoning to the instant case compels affirmance of the Michigan Tax Tribunals' Order Granting Respondent's Motion to Dismiss, and therefore denial of Ford's Application for Leave. As in General Products, Ford requests that the Court impute Ford's unilateral mistake to the City of Woodhaven, and to then call it a "mutual mistake of fact." Very simply, the situation presented is not a mutual mistake, but rather a unilateral mistake, a situation not addressed by MCL 211.53a. Appellant is requesting that the court rewrite the plain language of the statute.

II. THE WELL SETTLED MEANING OF MCL 211.53a SHOULD BE MAINTAINED UNTIL LEGISLATIVE ACTION IS TAKEN TO AMEND THE STATUTE

The General Products decision is in line with previous decisions of the Court of Appeals. In International Place Apartments v Ypsilanti Twp., 216 Mich App 104, 548 NW2d 668, (1996), the court refused to allow a township to attempt to change a real property tax assessment based upon its failure to include improvements of which it had been notified years earlier. The township assessor had misfiled the building permit and information regarding the improvements, which led to the incorrect assessment. Id, 216 Mich. App. at pp 106-107. The township argued that the

failure to assess the improvements was the result of a "clerical error" and should be corrected under MCL 211.53b. The International Place Court rejected the township's argument, stating as follows:

> "The mistake in the case at bar was not limited to merely recording a number incorrectly on the assessment rolls or performing a mathematical error in arriving at the final assessment figure. Rather, the figure recorded on the assessment rolls was accurate in the sense that it was the number intended by the assessor, albeit that the assessor may well have erred in the determination of what that number should be by failing to consider all relevant facts. In short, we agree with the Tax Tribunal that § 53b allows for corrections of clerical errors of a typographical or transpositional nature, but does not permit a reappraisal or reevaluation through the use of new or existing data of any type. That is, § 53b simply does not include cases where the assessor fails to consider all relevant data, even if the root of the assessor's error may have been a ministerial mistake such as the misfiling of a document." International Place, id, 216 Mich App at p. 109.

Note that the reasoning stated in International Place as being applicable to MCL 211.53b has been held to be applicable to cases under MCL 211.53a, as the two statutes are in pari materia and should be construed together. See Colonial Woods Limited Dividend Housing Assoc. v. City of Lansing, unpublished per curiam of the Court of Appeals, decided June 12, 2003, (Docket No. 239199) (attached hereto as **Exhibit 1**). In Colonial Woods, the city had included certain real property on its tax rolls although it had previously agreed with the taxpayer to remove that property as part of an agreement for Payment in Lieu of Taxes. The erroneous assessment and tax bills were issued but no protest was made until the time to challenge the assessment had already passed. The Colonial Woods Court found that the inclusion of real property on the city's tax rolls under those circumstances was "...not the type of clerical error that MCL 211.53a and MCL 211.53b were designed to correct." Colonial Woods, id. at p. 3.

Further, although the Appellant cites Ravenna Casting Center v Township of Ravenna, unpublished per curiam of the Court of Appeals, decided May 6, 2004, (Docket No. 239199) (attached to Appellant Ford's Brief on Appeal as Exhibit G) that decision is actually in accord with the decision below:

> "As in Int'l Place Apartments, supra at 109, the figure recorded on the assessment roles was accurate in the sense that it was the number intended by the assessor. **Although the assessor may have relied on mistaken information or failed to consider all of the relevant facts, MCL 211.53a does not permit the reappraisal or reevaluation of such errors.** .... Therefore, the MTT properly held that MCL 211.53a did not apply." Ravenna Casting, supra, at p. 3, emphasis added..

Most, if not all of the decisions, regarding the proper application of MCL 211.53a, have relied upon Wolverine Steel Co. v Detroit, 45 Mich App 671 (1973), in support of the narrow interpretation of MCL 211.53a in regard to "mutual mistake". Whether one agrees with the Wolverine Steel interpretation or not, it must be recognized that the interpretation has now been with us for over thirty years, and there has been no legislative action to clarify or change that interpretation. Note that there is currently pending House Bill 5364, passed by the Michigan House of Representatives on December 7, 2005, which specifically addresses the issue presented in the instant appeals. See **Exhibit 2**. The proposed amendment shows how the situation Appellant asserts was a mistake might be addressed legislatively. Appellees urge the Court to allow any necessary clarification to take place legislatively, rather than overturn the meaning given MCL 211.53a by the Michigan Tax Tribunal in numerous past decisions .

III. THE MTT'S INTERPRETATION OF MCL 211.53a SHOULD BE AFFIRMED AS A MATTER OF PUBLIC POLICY

As a matter of practicality, it would be very difficult for the assessing jurisdiction to verify the existence, value and type of personal property located within the jurisdiction years earlier. Personal property by its very nature is likely to be moveable. Thus property assessable in one jurisdiction this year might be moved to another jurisdiction in a subsequent year. By requiring the taxpayer to make timely protest regarding the assessment of personal property, the taxpayer is thus encouraged to file accurate reports regarding that property. If a mistake is made, the taxpayer is permitted to bring its protest within the relatively short time frame applicable to protests and appeals

brought under MCL 205.735, rather than utilizing MCL 211.53a which deals with a narrow class of disputes which might be brought, as in this case, several years after the taxes are assessed.

Based upon the prior case law, it appears that the matters which might currently be addressed under MCL211.53a involve clerical errors and mistakes which can easily be corrected, even years after the fact. Such is not the case here, as it would be impossible to turn back the clock more than three years to allow assessors to determine whether personal property was in fact misreported. years earlier.

During Oral Argument in the Court of Appeals, Ford, for the first time argued that the property involved in fact had been the subject of a "sale and lease back" by Ford. Appellees point out that if such is the case, then Ford was in the position to contractually protect itself from any problem with being inadvertently taxed on the personal property which it transferred to, and leased back, from a third party. Such protection would be appropriately part of the contractual arrangements between Ford and the third party involved.

In summary, the Michigan Tax Tribunal's interpretation has practical value, encouraging accurate reporting by the taxpayer and allowing local governments to rely upon the information provided by the taxpayer without risk that taxes collected years earlier will be challenged at a time when the accuracy of the taxpayer's information cannot be verified.

RELIEF REQUESTED

For all of the foregoing reasons, Appellees ask this Court to affirm the rulings of the Court of Appeals and the Michigan Tax Tribunal.

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fordbrf/883

EXHIBIT 1

STATE OF MICHIGAN

COURT OF APPEALS

COLONIAL WOODS LIMITED DIVIDEND HOUSING ASSOCIATION, Petitioner-Appellant,	UNPUBLISHED June 12, 2003
v	No. 239199 Michigan Tax Tribunal
CITY OF LANSING, Respondent-Appellee.	LC No. 00-283155

Before: Sawyer, P.J., and Meter and Schuette, JJ.

PER CURIAM.

Petitioner appeals as of right the order of the Michigan Tax Tribunal (MTT) dismissing its petition for relief. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Petitioner, a limited partnership, owns a parcel of property located within respondent's boundaries. The property was classified as commercial property for the tax year 1998. On the tax date for 1998, apartment units designated for persons of low and moderate incomes were under construction on the property. Previously, petitioner requested that respondent adopt an ordinance allowing petitioner to pay an annual service charge for public services in lieu of property taxes. MCL 125.1415(a). In July 1995 respondent adopted an ordinance that established and approved a formula for payment in lieu of taxes (PILOT), and authorized petitioner to pay a service charge of four percent of the difference between collected rents and billed utilities. In 1997 petitioner notified respondent that the housing project met the requirements of the ordinance and was eligible for PILOT treatment; however, respondent failed to remove the property from the tax rolls for the 1998 tax year. As a result, respondent issued tax bills totaling $126,552.84 for the 1998 tax year. Petitioner notified respondent of the error, but respondent informed petitioner that the time for changing an assessment had expired.

Petitioner filed a petition with the MTT asserting that the inclusion of the property on respondent's tax rolls constituted a clerical error. Petitioner sought correction of the error pursuant to MCL 211.53a, which provides that a taxpayer who is assessed and pays taxes in excess of the correct amount due as the result of "a clerical error or mutual mistake of fact" is entitled to recover the excess paid if suit is commenced within three years of the date of payment. Petitioner did not contend that the assessment was made pursuant to an incorrect rate or that a mathematical error occurred in the computation of the assessment. Petitioner's position

was that no assessment should have been made in the first instance. Petitioner requested that the MTT: declare the property exempt from taxes based on the ordinance, declare respondent's tax bills for the 1998 tax year null and void, and order petitioner to pay a PILOT in the amount of $18,322.20.[1]

The MTT sua sponte dismissed the petition on the ground that it did not invoke the Tribunal's subject matter jurisdiction because it was filed more than thirty days after the issuance of the tax bills for the 1998 tax year. MCL 205.735(2). The MTT relied on *International Place Apartments-IV v Ypsilanti Twp*, 216 Mich App 104, 109; 548 NW2d 668 (1996), in which another panel of this Court held that MCL 211.53b allows for correction of a clerical error of a typographical or transcriptional nature. The MTT found that the error in this case, the inclusion of petitioner's property on the tax rolls, was not clerical in nature.

Petitioner and respondent filed a joint motion for reconsideration, arguing that *International Place*, *supra*, was inapplicable for the reason that it interpreted and applied MCL 211.53b rather than MCL 211.53a. The parties contended that the error in this case resulted in the inadvertent and incorrect placement of the property on respondent's tax rolls for 1998, and thus was the type of error eligible for correction under MCL 211.53a[2] The parties also contended that petitioner was entitled to equitable relief pursuant to *Spoon-Shacket Co v Oakland County*, 356 Mich 151, 168; 97 NW2d 25 (1959). The MTT denied the parties' motion, emphasizing that *International Place*, *supra*, held that MCL 211.53b did not allow for reappraisals even if the root of the error was a ministerial mistake.

We review a decision of the MTT to determine whether the MTT erred as a matter of law or adopted an erroneous legal principle. We accept the MTT's factual findings as final if those findings are "supported by competent, material, and substantial evidence on the whole record." *Danse Corp v Madison Heights*, 466 Mich 175, 178; 644 NW2d 721 (2002) (citations omitted).

Petitioner argues that the MTT erred by dismissing its petition because the type of error committed in this case is the type of error that MCL 211.53a was designed to correct. Petitioner asserts that because the term "clerical error" is not qualified in MCL 211.53a, as it is in MCL 211.53b, it must be construed in accordance with its common law meaning. *Farrell v Auto Club of Michigan*, 148 Mich App 165, 169; 383 NW2d 623 (1986). The common definition of "clerical error" includes an error or omission by a clerk, i.e., a ministerial mistake. Black's Law Dictionary (6th ed).

We disagree and affirm the MTT's decision. Petitioner's assertion that MCL 211.53a is more expansive in scope than MCL 211.53b is without merit. In *Wolverine Steel Co v Detroit*, 45 Mich App 671, 674; 207 NW2d 194 (1973), another panel of this Court held that an error in

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[1] Nothing on the record before this Court indicates that petitioner paid the tax bill. Furthermore, nothing on the record indicates that the property was included on respondent's tax rolls in later years.

[2] Respondent did not join in petitioner's request for relief (as stated in the original petition), but sought a status conference to discuss the matter. Apparently, the MTT issued its decision before a status conference could occur.

determining the application of the United States Constitution to the tax laws of Michigan was not the type of mistake of fact contemplated by MCL 211.53a. The *Wolverine* Court examined the relationship between MCL 211.53a and MCL 211.53b and observed that the statutes were *in pari materia* and should be construed together. *Wolverine, supra* at 674. The *Wolverine* Court noted that MCL 211.53b listed errors in assessment, application of the proper tax rate, and mathematics as the types of errors or mistakes with which it was intended to deal, and concluded that those were the types of errors or mistakes contemplated by MCL 211.53a. *Wolverine, supra* at 676.

The *International Place* Court concluded that while MCL 211.53b allowed for correction of clerical errors of a "typographical or transpositional nature," the statute did not permit reappraisal or reevaluation in cases in which the assessor failed to consider all relevant data, "even if the root of the assessor's error may have been a ministerial mistake such as the misfiling of a document." *International Place, supra.*

Here, the source of the error, i.e., the inclusion of petitioner's property on respondent's tax rolls and the assessment of petitioner's property under applicable tax rates, was a ministerial mistake. The MTT correctly held that this is not the type of clerical error that MCL 211.53a and MCL 211.53b were designed to correct. *Wolverine, supra*; *International Place, supra.* Petitioner's reliance on *Spoon-Shacket Co, supra*, is misplaced under the circumstances because that case was decided under common-law equity principles rather than on the statutes at issue in this case. *International Place, supra* at 108.

Affirmed.

/s/ David H. Sawyer
/s/ Patrick M. Meter
/s/ Bill Schuette

EXHIBIT 2

SUBSTITUTE FOR

HOUSE BILL NO. 5364

A bill to amend 1893 PA 206, entitled

"The general property tax act,"

by amending sections 53a and 53b (MCL 211.53a and 211.53b), section 53b as amended by 2003 PA 105, and by adding section 27e.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

SEC. 27E. IF THE ASSESSOR AND THE OWNER OF PROPERTY LIABLE TO TAXATION, INCLUDING PROPERTY SUBJECT TO TAXATION UNDER 1974 PA 198, MCL 207.551 TO 207.572, 1905 PA 282, MCL 207.1 TO 207.21, 1953 PA 189, MCL 211.181 TO 211.182, AND THE COMMERCIAL REDEVELOPMENT ACT, 1978 PA 255, MCL 207.651 TO 207.668, AGREE THAT THE PROPERTY HAS BEEN INCORRECTLY ASSESSED FOR THE CURRENT ASSESSMENT YEAR AND 1 YEAR IMMEDIATELY PRECEDING THE DATE OF DISCOVERY AND DISCLOSURE TO

THE ASSESSOR OF THE INCORRECT ASSESSMENT, THE ASSESSOR SHALL PREPARE AND EXECUTE AN AFFIDAVIT, WHICH SHALL ALSO BE SIGNED BY THE OWNER OF THE PROPERTY, VERIFYING THE MUTUAL MISTAKE OF FACT TO THE JULY OR DECEMBER BOARD OF REVIEW.

Sec. 53a. Any taxpayer who is assessed and pays taxes in excess of the correct and lawful amount due because of a clerical error, ~~or~~ mutual mistake of fact made by the assessing officer and the taxpayer, **OR AN ERROR MADE BY THE TAXPAYER IN PREPARING THE STATEMENT OF ASSESSABLE PERSONAL PROPERTY UNDER SECTION 19** may recover the excess ~~so~~ paid, without interest, if suit is commenced within 3 years from the date of payment, notwithstanding that the payment was not made under protest.

Sec. 53b. (1) If there has been a clerical error, ~~or~~ a mutual mistake of fact, **OR ERROR** relative to the correct assessment figures, the rate of taxation, or the mathematical computation relating to the assessing of taxes, the clerical error, ~~or~~ mutual mistake of fact, **OR ERROR** shall be verified by the local assessing officer and approved by the board of review at a meeting held for the purposes of this section on Tuesday following the second Monday in December and, for summer property taxes, on Tuesday following the third Monday in July. If there is not a levy of summer property taxes, the board of review may meet for the purposes of this section on Tuesday following the third Monday in July. If approved, the board of review shall file an affidavit within 30 days relative to the clerical error, ~~or~~ mutual mistake of fact, **OR ERROR** with the proper officials who are involved with the assessment figures, rate of taxation, or mathematical computation and all affected

official records shall be corrected. **IF AN AFFIDAVIT IS SUBMITTED TO THE BOARD OF REVIEW UNDER SECTION 27E, THE BOARD OF REVIEW SHALL APPROVE THE CORRECTION OF THE ERROR.** If the clerical error, ~~or~~ mutual mistake of fact, **OR ERROR** results in an overpayment or underpayment, the rebate, including any interest paid, shall be made to the taxpayer or the taxpayer shall be notified and payment made within 30 days of the notice. A rebate shall be without interest. The ~~county~~ treasurer **IN POSSESSION OF THE APPROPRIATE TAX ROLL** may deduct the rebate from the appropriate tax collecting unit's subsequent distribution of taxes. The ~~county~~ treasurer **IN POSSESSION OF THE APPROPRIATE TAX ROLL** shall bill to the appropriate tax collecting unit the tax collecting unit's share of taxes rebated. Except as otherwise provided in subsection (6), a correction under this subsection may be made in the year in which the error was made or in the following year only.

(2) Action pursuant to this section may be initiated by the taxpayer or the assessing officer.

(3) The board of review meeting in July and December shall meet only for the purpose described in subsection (1) and to hear appeals provided for in sections 7u, 7cc, and 7ee. If an exemption under section 7u is approved, the board of review shall file an affidavit with the proper officials involved in the assessment and collection of taxes and all affected official records shall be corrected. If an appeal under section 7cc or 7ee results in a determination that an overpayment has been made, the board of review shall file an affidavit and a rebate shall be made at the times and in the manner provided in subsection (1). Except as

otherwise provided in sections 7cc and 7ee, a correction under this subsection shall be made for the year in which the appeal is made only. If the board of review grants an exemption or provides a rebate for property under section 7cc or 7ee as provided in this subsection, the board of review shall require the owner to execute the affidavit provided for in section 7cc or 7ee and shall forward a copy of any section 7cc affidavits to the department of treasury.

(4) If an exemption under section 7cc is granted by the board of review under this section, the provisions of section 7cc(6) through (11) apply. If an exemption under section 7cc is not granted by the board of review under this section, the owner may appeal that decision in writing to the department of treasury within 35 days of the board of review's denial and the appeal shall be conducted as provided in section ~~7ee(7)~~ **7CC(8)**.

(5) An owner or assessor may appeal a decision of the board of review under this section regarding an exemption under section 7ee to the residential and small claims division of the Michigan tax tribunal. An owner is not required to pay the amount of tax in dispute in order to receive a final determination of the residential and small claims division of the Michigan tax tribunal. However, interest and penalties, if any, shall accrue and be computed based on interest and penalties that would have accrued from the date the taxes were originally levied as if there had not been an exemption.

(6) A correction under this section that grants a homestead exemption pursuant to section 7cc(21) may be made for the year in which the appeal was filed and the 3 immediately preceding tax

years.